Filed 5/9/19 In re J.R. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.R., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.R., Defendant and Appellant.	E071600 (Super.Ct.No. J277916) OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Dawn M. Martin, Deputy County Counsel for Plaintiff and Respondent.

Defendant and appellant J.R. (father) is the presumed father and M.P. (mother) is the mother of Je.R. (minor). Father appeals from the juvenile court's jurisdictional and dispositional findings and orders under the Welfare and Institutions Code.[1] For the reasons set forth below, we affirm the court's findings and orders.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

Both mother and father (collectively, parents) had criminal histories and struggled with substance abuse. Father's criminal history dated back to 1987 and included several convictions for possession of a controlled substance. In February of 2011, father was convicted of participating in a criminal street gang and assault with a firearm. The record shows that father was charged with possessing a controlled substance in 2013, and assault with a deadly weapon in 2017. It appears that father was not convicted on those charges.

In addition to having criminal records, the parents have histories with the San Bernardino County Department of Children and Family Services (CFS). In 1988, the juvenile court terminated the parental rights of father to four of his older children, half siblings to minor in this case. Two of mother's older children, also half siblings to minor, were removed from mother's custody in 2013. When mother failed to reunify, one child was placed with her father and the other child was adopted.

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise specified.

In May of 2018, parents had J.R., Jr. (brother) removed from their custody; he is a full sibling to minor. CFS did not detail the circumstances surrounding brother's removal in the pleadings filed in this case. Brother was an infant at the time of removal.

B. DETENTION

In September 2018, mother, while incarcerated, gave birth to minor. Mother was serving time for an outstanding warrant and was expected to be released in October 2018. Mother told the social worker that father was minor's father.

Mother tested positive for methadone. Minor showed signs of withdrawal, i.e., uncontrollable shaking, although her drug tests were negative. Mother reported having a history of heroin and opiate use but had been clean for three years. Mother stated that she was using methadone continuously as part of her treatment plan.

Father had an extensive criminal history dating back to 1987. From 1987 to 2017, father was charged with a wide range of over 100 crimes including driving without a license, vehicle theft, receiving stolen property, possessing controlled substances, violating parole, robbery, obstruction and resisting an officer, being under the influence of a controlled substance, battery, and tampering with evidence. In April and July 2017 father was charged with assault with force likely to produce great bodily injury. Father's last convictions were for participating in a criminal street gang and assault with a firearm in 2011.

Mother wanted maternal great-grandmother to care for minor. Mother did not believe that father had the capacity to provide adequate care for minor. Mother reported no history of domestic violence with father but was concerned that he might be angered

easily by a crying baby. The social worker spoke with father; he indicated that he was willing and able to care for minor.

On September 25, 2018, CFS filed a section 300 petition under subdivision (b). The petition stated that parents had extensive criminal and substance abuse histories. The petition also included allegations under subdivision (g) due to mother's incarceration and inability to care for minor; and subdivision (j) due to mother's history of failed reunification services.

At the detention hearing on September 26, 2018, the juvenile court found a prima facie case for detaining minor and ordered supervised visits a minimum of one time per week for two hours.

B. JURISDICTON / DISPOSITION

In the jurisdiction/disposition report filed on October 12, 2018, CFS recommended that a majority of the section 300 petition be found true and that family reunification services be provided to parents. Minor was still in the neonatal intensive care unit.

As stated *ante*, father's parental rights to his four older children were terminated in 1998. Also, mother's two older children were removed from her care in 2013 and she failed to reunify with them. One child was placed with her father and the other child was adopted.

Brother was removed from parents' custody in May of 2018 and his dependency case was pending.[2] After father agreed to brother's removal at mediation, the juvenile

[2] Mother also had another child from a different father removed at the same time that brother was removed. That child's dependency case was open at that time.

court ordered reunification services. Father was compliant with court orders and adhered to the case plan.

The social worker noted that father was attending counseling, had attended parenting classes, and was participating in random drug tests with negative results. CFS observed father's home and verified he had provisions to care for minor. Father disclosed that he had a history of substance abuse but the last time he used methamphetamine was five years ago. Moreover, father admitted that he was involved in domestic violence with his older children's mother, but that he was never involved in domestic violence with mother. Father had multiple visits per week with brother. He also visited minor in the hospital when accompanied by maternal great-grandmother or maternal grandmother.

On October 17, 2018, at the jurisdiction/disposition hearing, the juvenile court set the matter for a contested hearing at father's request. Moreover, the court authorized father to visit minor under the supervision of hospital staff, consistent with the hospital's policies and procedures.

On October 31, 2018, CFS filed "Additional Information to the Court." CFS noted that father was consistent and appropriate when visiting minor at the hospital. The social worker assigned to minor spoke with the social worker assigned to brother's dependency case. In brother's case, father had unsupervised visits two times per week for two hours. According to brother's social worker, " 'Father continues to be resistant to working with CFS as he feels that this case is not warranted and his child should have never been removed from him.' " Despite his resistance, father was participating in

services and appeared to be benefitting from those services. Father told the social worker in brother's case that he believed therapy and parenting classes had been helpful. The social worker observed positive growth in father. Notwithstanding, the social worker believed that father needed to continue in therapy to become more consistent in dealing with his anger. She opined that father was not prepared to care for two children under the age of two years at the same time. The social worker did believe that father could learn to care for the two children with continued therapy and experience. Therefore, CFS recommended that unsupervised visits between father and brother continue, and visits with minor continue to be supervised until " 'appropriate to become unsupervised.' "

As to disposition, father's counsel argued that in brother's case, mother got arrested and CFS was involved since she was the custodian of brother. Father was only named because he was caring for brother every other weekend. There was nothing to indicate that father would present a danger if brother was placed in father's custody. Father's counsel also claimed that CFS was involved in minor's case due to the removal of brother. And, like brother's case, there was no substantial evidence that placing minor in father's care would place her at risk. Father's counsel then referred to the progress father had made in brother's case and father's positive visits with minor.

The juvenile court noted that father's progress was going in the right direction, and the jurisdiction/disposition report referred to a plan for transition of the children to father's care. Father's counsel argued that minor should be returned to father's care when released from the hospital, and then transition brother to father's care, instead of transitioning both children to father's care at the same time. Counsel for CFS stated that

reunification services were more appropriate at this time because of the children's young ages and father's ability to benefit from services; father was taking responsibility and progressing. Family maintenance was "not going to be too far off for him." Minor's counsel then pointed out that there was a difference between progress and being ready for family maintenance. Although father's counsel continued to maintain that there was no evidence of detriment, the court responded, "The Court disagrees."

The juvenile court found that it would be detrimental to place minor with father, and ordered reunification services for parents. The court continued the order allowing father to visit minor in the hospital, and gave CFS authority to allow unsupervised visits after minor's release from the hospital.

C. NOTICE OF APPEAL

On November 5, 2018, father filed a notice of appeal seeking relief from the findings and orders entered at the October 30, 2018, combined jurisdictional and dispositional hearing.

DISCUSSION

A. THE JUVENILE COURT PROEPRLY SUSTAINED THE SECTION 300, SUBDIVISION (b)(1) ALLEGATIONS AGAINST FATHER

Father contends that "[t]he court reversibly erred by sustaining section 300, subdivision (b)(1) allegations against [father] in the absences of substantial evidence showing that he had caused [minor] to suffer, or put her at an ongoing risk of suffering, serious physical harm or illness as a result of parental neglect." As explained below, we

conclude that his challenges fail because there is overwhelming evidence of the allegations against mother to establish the court's jurisdiction.

The petitioner in a dependency proceeding must prove by a preponderance of evidence that the child who is the subject of the petition comes under the juvenile court's jurisdiction. (*In re Shelley J.* (1988) 68 Cal.App.4th 322, 329.) We review jurisdictional findings under the substantial evidence standard. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575; *In re A.S.* (2011) 202 Cal.App.4th 237, 244.) Under this standard, we determine whether there is any substantial evidence, contradicted or uncontradicted, which supports the conclusion of the trier of fact. (*In re Tracy Z.*(1987) 195 Cal.App.3d 107, 113.) All evidentiary conflicts are resolved in favor of the respondent, and where more than one inference can reasonably be deduced from the facts, we cannot substitute our own deductions for those of the trier of fact. (*In re John V.* (1991) 5 Cal.App.4th 1201, 1212.)

Generally, to acquire jurisdiction under subdivision (b) of section 300, the juvenile court was obliged to find that the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result" of specified forms of parental neglect, including substance abuse, physical abuse, and failure to protect the child. To secure jurisdiction over a child under section 300, the juvenile court was not obliged to make jurisdictional findings against both father and mother, only one of them. Because the focus of the statutory scheme governing dependency is the protection of children, "the minor is a dependent if the actions of *either parent* bring [him or her] within one of the statutory definitions of a dependent." (*In re Alysha S.* (1996) 51

Cal.App.4th 383, 397, italics added, disapproved on another issue in *In re Shelley J.*, *supra*, 68 Cal.App.4th at p. 328.) CFS "is not required to prove two petitions, one against the mother and one against the father, in order for the court to properly sustain a petition [pursuant to § 300] or adjudicate a dependency." (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.) "A petition is brought on behalf of the child, not to punish the parents. [Citation.] The interests of both parent and child are protected by the two-step process of a dependency proceeding, with its separate adjudication and disposition hearings. Thus, when [the department] makes a prima facie case under section 300 by proving the jurisdictional facts at the adjudication hearing, it is not improper for the court to sustain the petition; not until the disposition hearing does the court determine whether the minor should be adjudged a dependent." (*Ibid.*; see also *In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.)

In this case, father does not challenge the jurisdictional findings based on mother's conduct, and there is more than substantial evidence to support jurisdiction of minor based on mother's conduct alone. In *In re I.A.* (2011) 201 Cal.App.4th 1484 (*I.A.*) is instructive. In that case, the jurisdictional allegations included mother's drug abuse, domestic violence between the parents, and the parents' criminal histories. (*Id.* at p. 1488.) The father there also challenged the jurisdictional findings based on his conduct, but not the findings based on the mother's conduct. The court dismissed the appeal as moot because the father's "contentions, even if accepted, would not justify a reversal of the court's jurisdiction." (*Id.* at pp. 1487-1488.) The court explained: "[I]t is necessary only for the court to find that one parent's conduct has created circumstances triggering

section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300—e.g., a risk of serious physical harm (subds. (a) & (b)), serious emotional damage (subd. (c)), sexual or other abuse (subds. (d) & (e)), or abandonment (subd. (g)), among others—the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances." (*Id.* at pp. 1491-1492.)

Here, CFS established jurisdiction based on mother's history of substance abuse and history with CFS (and father's criminal and substance abuse history). Because CFS established jurisdiction based on mother's substance abuse and history with CFS, the juvenile court properly found that minor came within the jurisdiction of section 300, subdivision (b). (*I.A.*, *supra*, 201 Cal.App.4th a pp. 1491-1492.) Accordingly, because father does not challenge the sufficiency of the evidence to support the jurisdictional allegations as to mother, the juvenile court properly exercised jurisdiction over the children even if father's conduct were not an independent basis for jurisdiction. (See, e.g., *In re Maria R.* (2010) 185 Cal.App.4th 48, 60, disapproved on another ground in *In re I.J.* (2013) 56 Cal.4th 766, 780-781; *In re Jeffrey P.*(1990) 218 Cal.App.3d 1548, 1553-1554; *In re John S.* (2001) 88 Cal.App.4th 1140, 1143.)

Father acknowledges that jurisdiction over a child is established if the conduct of *either* parent places the child at risk under the criteria of section 300. Citing *In re Drake M.* (2012) 211 Cal.App.4th 754, 763 (*Drake M.*), father argues nonetheless that this court

should reach the issue because " 'the outcome of the appeal could be the difference between father being an "offending" parent versus a "non-offending" parent.' "

The general rule notwithstanding, there are some circumstances in which a reviewing court may exercise its discretion to address additional jurisdictional findings as to one parent. These include: (1) when the finding "serves as the basis for dispositional orders that are also challenged on appeal [citation];" (2) when the finding "could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citation];" and (3) when the finding " 'could have other consequences for [the appellant], beyond [dependency] jurisdiction [citations].' " (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 762-763.) In *Drake M.*, the court exercised its discretion to consider the custodial father's challenge to jurisdiction because he was seeking custody of the child and the outcome of the appeal would mean the difference between the father being an "offending" versus a "non-offending" parent, a distinction that could affect the father's custody rights under section 361, subdivision (c)(1) [when there is clear and convincing evidence that a child would be in substantial danger if returned home, the "court shall consider, as a reasonable means to protect the minor . . . [¶] . . . [¶] [a]llowing a nonoffending parent or guardian to retain physical custody"]. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 763.)

Here, unlike in *Drake M.*, neither father nor the record suggest any "far reaching implications" of the section 300, subdivision (b), allegations justifying our discretionary review of that issue. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 763.) In fact, Father does not suggest "a single specific legal or practical consequence" of the section 300,

subdivision (b) finding. (See *I.A.*, *supra*, 201 Cal.App.4th at p. 1493.) General allegations that the findings could impact future court orders are insufficient; the parent must identify specific legal or practical consequences arising from the dependency findings. (*Ibid.*) The record does not suggest any such consequence. Moreover, father has not challenged any of the dispositional orders, nor has he identified any orders resulting from the true finding he attempts to challenge, which adversely affect him. Because father has not established any actual or threatened prejudice from the jurisdictional finding he seeks to challenge, we decline to exercise our jurisdiction to review it. (*I.A.*, at pp. 1493-1495.)

Notwithstanding the foregoing, were we to consider the merit of father's contentions, we would hold that substantial evidence supported the juvenile court's jurisdictional findings as to father. Here, the juvenile court found that father's criminal and substance abuse history placed minor at substantial risk of abuse and neglect. Contrary to father's argument, the record shows that father had a lengthy and colorful criminal history dating back to 1987. As set forth *ante*, the charges and/or convictions included vehicle theft, child stealing, assault with a deadly weapon, injuring a spouse, possessing or being under the influence of controlled substances, trespass, robbery, disobeying a court order, violation of parole, and evading a police officer. Moreover, father was charged with assault with a deadly weapon in 2017, trespass in April of 2018, and vehicle theft in August of 2018. Moreover, although father had been testing clean, he had only been testing recently, after brother's removal. Therefore, based on father's history, we find that there is substantial evidence to support the juvenile court's finding.

B. THE JUVENILE COURT PROPERLY REMOVED MINOR FROM FATHER'S CARE

Father contends that "[t]he court erred by removing [minor] from [father's] custody in the absence of substantial evidence showing that removal was the only reasonable way to protect the minor." We disagree with father and affirm the removal of minor.

"The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) In reviewing an order for abuse of discretion, we " 'must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court's ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child.' " (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) "The trial court is accorded wide discretion and its determination will not be disturbed on appeal absent 'a manifest of showing of abuse.' " (*Ibid.*)

Citing numerous cases, father argues that CFS should have considered other alternatives beyond removing minor from father's custody. He contends that the juvenile court could have ordered father to continue refraining from using controlled substances and all criminal activity, provide care for minor under the paternal grandmother's supervision and/or allow CFS unannounced visits. Father also argues that there is no evidence to suggest that minor had even been injured. Moreover, father states that he has

demonstrated he is willing to cooperate with CFS and comply with court orders, as he has done in brother's case. The record shows that minor was removed at birth and never resided with father—hence, there should be no evidence to show that minor had been injured. Moreover, as to brother's dependency case, the record shows that brother was removed as an infant, and it has only been an open dependency case for five months. Father was still receiving family reunification services and brother was not in father's custody either.

In this case, we discern no abuse of discretion in the trial court's removal order. First, father has a history with CFS, in addition to brother's case. As noted *ante*, father's parental rights to four older children were terminated 10 years ago. Moreover, both mother and CFS opined that father continued to have anger issues and CFS required ongoing counseling to address those issues. The social worker, despite seeing positive growth in father when he became angry with CFS, still believed that father needed continued therapy to become consistent in dealing with challenges and anger. At this time, the social worker did not believe that father was ready. Furthermore, as discussed previously, father had a lengthy criminal and substance abuse history.

Notwithstanding our finding that the court did not abuse its discretion, we note that father has made great progress in this dependency, which the juvenile court also recognized. The juvenile court noted that father is "doing what he needs to do. They are very positive about his visits. It does not discuss frustration and anger. [¶] What it discusse[d] is that they would like to be able to plan for transition. And the JD report, specifically, says that that's what's going to be likely to be happening both with [brother],

and with [minor]." [¶] So contrary to how you're describing this, this is going in a positive direction. [Father] has been honest about disclosing and coming to take responsibility for the past criminal history, the substance-abuse history, and demonstrating that he can progress to being able to reunify here." The court then went on to state that father "is going to likely have family maintenance as he transitions." Therefore, based on the record, although the court recognized that father is headed in the right direction, the court wanted to give father more time in therapy to grow and learn how to control his anger, to better care for his two children under the age of two. We agree with the juvenile court.

DISPOSITION

The juvenile court's orders and findings are affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.